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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORACLE AMERICA, INC.,

No. C 10-03561 WHA

Plaintiff,

v.

PROPOSED TRIAL PLAN

GOOGLE INC.,

Defendant.

The jury trial will be trifurcated into three phases, all before the same jury, as follows:

Phase one. Liability on the copyright claims, including all defenses thereto, will be tried and determined by special verdict before going to Phase Two.

Phase Two. Liability on the patent claims, including all defenses for the jury. The jury will decide these issues before going to Phase Three.

Phase Three. All remaining issues will be tried, including damages and willfulness.

All evidence presented in an earlier phase can be used by counsel and by the jury in a subsequent phase as relevant to the issues then on trial. If, for example, more general “Java” issues are pertinent in Phase One, such as implied license, laches, equitable estoppel, and waiver, then the more general evidence on “Java” may be presented in Phase One and considered again, as relevant, in any subsequent phase. There will need to be evidence-presentation time limits per side for each phase with the understanding that unused time may be carried forward to a subsequent phase. The time limits will be set later.

1 By NOON ON NOVEMBER 18, 2011, counsel may critique the proposed plan. If there are
2 objections, then case law, rules, or statutes must be cited as well as the particular
3 evidence/advocacy problems. Although the trial will not be in 2011, the Court needs some lead
4 time to pre-clear a venire for hardship for a long trial.

5

6 **IT IS SO ORDERED.**

7
8 Dated: October 26, 2011.


9 WILLIAM ALSUP
10 UNITED STATES DISTRICT JUDGE